

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	WC Docket No. 07-245
Implementation of Section 224 of the Act;	)	
Amendment of the Commission's Rules and	)	GN Docket No. 09-51
Policies Governing Pole Attachments	)	

**COMMENTS OF  
FIBER TECHNOLOGIES NETWORKS, L.L.C.**

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August 16, 2010

## I. INTRODUCTION

Fiber Technologies Networks, L.L.C. (“Fibertech”) submits these comments in response to the Order and Further Notice of Proposed Rulemaking (“NPRM”) released May 20, 2010. Fibertech applauds and welcomes the majority of proposals in the NPRM and limits its comments to certain areas of critical importance.

Fibertech was founded in June 2000. In the past decade, Fibertech has become an industry leader in designing, installing, and operating metro-area high speed broadband networks and customized network solutions for commercial, medical, educational, and government customers located in the Eastern and Central regions of the United States. These networks are “open-access networks,” available to all users, including other wireline and wireless telecommunications companies.

Fibertech utilizes existing utility poles, conduits and rights of way to extend its fiber to its designated end-user locations. Without access to poles and conduit, Fibertech cannot deploy networks. Similarly, unreasonably delayed or priced access limits the extent to which Fibertech and other providers can deploy network facilities, including critical broadband facilities. Accordingly, the issues presented in the NPRM are of utmost importance. While Fibertech has deployed approximately 6,000 miles of network in the past decade, pole licensing delays from pole owners has stunted the growth of its networks and diminished its ability to provide competitive service.

In its National Broadband Plan (“NBP”), the Commission noted that “Rearranging existing pole attachments or installing new poles... can be a significant source of cost and delay in building broadband networks.”<sup>1</sup> The rules proposed in the

<sup>1</sup> *Omnibus Broadband Initiative*, Federal Communications Commission, Connecting America: The National Broadband Plan, at 129 (rel. Mar. 16, 2010) (hereinafter “*National Broadband Plan*”).

NPRM will significantly reduce the cost and delay caused by such make-ready work.

Nevertheless, the proposed rules may be improved upon, as set forth herein.

## **II. THE USE OF CONTRACTORS WILL ACCELERATE THE PENETRATION OF COMPETITIVE BROADBAND**

The Commission has properly noted that use of contractors can significantly reduce delays caused by pole owners failing timely to complete make-ready work. When attachers may hire qualified contractors to perform delayed make-ready work, they may predict with greater confidence the date when service may be started. Instead of uncertain roll-out dates, coupled with the inability to tell prospective customers when they will have service, an attacher will be able to better plan and sell its services, more accurately and reliably predict its revenues, and more effectively attract private capital for broadband deployment.

As the rules are proposed, only where a pole owner is unable or unwilling to abide by timeframes set by the Commission will contractors be used. The proposed rules make clear that contractors must be appropriately trained and qualified. In the case of telecommunications workers, contractors must have the same qualifications in terms of training as the incumbent LEC workers. For electric utility make-ready work, Section IV(B)(2)(c) provides for enhanced qualification of electrical contractors. Under that proposed rule, an electrical utility may post a list of pre-approved and pre-certified contractors qualified to perform make-ready work. Fibertech agrees that electrical utilities should be given the opportunity to pre-approve contractors. Only where an electrical utility fails to post such a list, or where the list is insufficient in number of contractors, should attachers be permitted to avail themselves of electrical contractors

under the “same qualifications” standard.<sup>2</sup> Where an electrical utility has previously used a contractor for its own purposes, and absent a material change in circumstances, those contractors should be presumed approved and certified.<sup>3</sup> Further, there should be a mechanism in place for contractors to become approved and certified by a utility, to prevent shortages of approved contractors.

Additionally, pole owners should have an affirmative duty to keep attachers informed of progress in completing make-ready work. When it becomes apparent that make-ready work will not be completed by a deadline, the pole owner should notify the attacher when the likelihood of delay becomes apparent, so that arrangements may be made with contractors in time to avoid tardy completion of the proposed facilities.

By implementing such a system, utilities would retain control over their important standards of safety and reliability. Utilities, or contractors familiar with their system and requirements, would perform the pole surveys, as well as determine any necessary make-ready work. Similarly, contractors familiar with the electrical system and the utility requirements should be permitted to perform the electrical make-ready work when the utility is unable or unwilling to complete make-ready work in a timely manner.

### **III. CONTRACTOR RULES SHOULD BE CLARIFIED TO FURTHER ASSURE TIMELY COMPLETION OF MAKE-READY WORK**

As written, the proposed rules contain some problematic uncertainty and improvement is possible. The most notable area of uncertainty is the interplay between those sections allowing the use of contractors (sections IV(B)(2)(a-b)) and the section

<sup>2</sup> See *Implementation of Section 224 of the Act -- A National Broadband Plan for Our Future*, Order and Notice of Proposed Rulemaking, FCC 10-84 (Rel. May 20, 2010) (hereinafter “NPRM”) at ¶ 64.

<sup>3</sup> *Id.*

limiting use of contractors to the space below electrical facilities (paragraph 69). For the reasons stated below, this uncertainty should be clarified.

In Section IV(B)(2)(a), the Commission proposes allowing attachers to use contractors to perform surveys and make-ready work if a utility has failed to perform its obligations within the designated timeline. While paragraph 69 could be read to limit contractor-performed make-ready work to that in the communications space, such a reading would significantly diminish the usefulness of utilizing contractors to complete make-ready work. Properly qualified contractors (and in the case of electric utilities, properly approved contractors) should be permitted to perform make-ready work on the pole, wherever such work is required. Of course, if electrical make-ready is required, the contractors would be pre-approved by the utility, as provided for in the proposed rules.<sup>4</sup> Approved contractors would be performing make-ready work designated by the utility after the survey and make-ready determination. As approved contractors, they would be familiar with the processes, techniques, and requirements of the relevant utility. Accordingly, any impact on safety and reliability of the electrical system would remain squarely within the control of the electric utility, while still protecting attachers from make-ready delays.

A contrary interpretation would provide no relief where an electrical utility delays completion of make-ready work. Because it could not utilize contractors to complete the work in a timely manner, an attacher would have no ability to control or predict the completion of its deployment whenever make-ready work involves electrical facilities (which it nearly always does). Further, where such electrical make-ready delays occur, they may prevent incumbent LEC and other communications attachers from completing

<sup>4</sup> *Id.* at ¶ 62.

their work in a timely and efficient manner. Attachers would face the same situation they face today, where they must endure delay, or expend important resources challenging the delay before the FCC, while customers await service. Notably, the New York rule, which the Commission cites supporting its proposed rules, has no provision limiting contractor-performed make-ready work to the communications space and worker safety space on a pole.<sup>5</sup>

#### **IV. THE TIMEFRAMES FOR STANDARD APPLICATIONS SHOULD BE SHORTENED**

The time frames set forth in the NPRM, while better than the status quo, may be significantly improved, as experience has shown in Connecticut and New York. Further efficiency can be built into the rules. First, the proposed timeframe properly dictates that a survey and make-ready determination should be completed within 45 days of a complete application.<sup>6</sup> The law, and the industry, have accepted this timeframe for standard applications.

The proposed rules then prescribe a 14 day period for preparation of a make-ready estimate.<sup>7</sup> Such a period is not necessary. If make-ready work is to be billed according to published rates for common tasks,<sup>8</sup> preparation of a make-ready estimate will consist of little more than affixing prices to already-determined make-ready tasks. The estimate for make-ready work should be prepared contemporaneously with the make-ready

<sup>5</sup> *Order Adopting Policy Statement on Pole Attachments*, Case 02-M-0432, at Appx. A, 11-12 (New York Pub. Serv. Comm'n 2004) (hereinafter "N.Y. PSC Order"), available at <http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={C0C4902C-7B96-4E20-936B-2174CE0621A7}>.

<sup>6</sup> NPRM at ¶ 35.

<sup>7</sup> *Id.* at ¶ 38.

<sup>8</sup> *Id.* at ¶ 71.

determination. Experience in Connecticut, which has no such two-week estimate period, shows that no additional period is necessary.<sup>9</sup>

The 14-day acceptance period is reasonable, provided that the make-ready performance period begins immediately upon acceptance. The proposed rules provide for a 45-day period to complete make-ready work. This timeframe is consistent with those established in New York and Connecticut.<sup>10</sup> Experience shows that this time period is sufficient for standard applications.

The 30-day “multiparty coordination” period is unnecessary.<sup>11</sup> The multiparty coordination period addresses the situation where an existing third-party attacher fails to timely perform make-ready work. The Commission noted that “Delays can... result from existing attachers’ action (or inaction) to move equipment to accommodate a new attacher, potentially a competitor. As a result, reform must address the obligations of existing attachers as well as the pole owner.”<sup>12</sup> Accordingly, the NBP recommended that new rules:

Ensure that existing attachers take action within a specified period (such as 30 days) to accommodate a new attacher. This can be accomplished through measures such as mandatory timelines and rules that would allow the pole owner or new attacher to move existing communications attachments if the timeline is not met.<sup>13</sup>

While the NBP recommends a 30-day period for third party attacher make-ready work, the proposed rule allots 60 days. Given the requirements placed on pole owners, it

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<sup>9</sup> *Review of the State’s Public Service Company Utility Pole Make-Ready Procedures, Phase I*, Decision, Docket No. 07-02-13, at 18 (Conn. Dep’t of Pub. Util. Control, Apr. 30, 2008), available at [http://www.dpuc.state.ct.us/dockhist.nsf/8e6fc37a54110e3e852576190052b64d/69ccb9118f035bc38525755a005df44a/\\$FILE/070213-043008.doc](http://www.dpuc.state.ct.us/dockhist.nsf/8e6fc37a54110e3e852576190052b64d/69ccb9118f035bc38525755a005df44a/$FILE/070213-043008.doc).

<sup>10</sup> N.Y. PSC Order at 3.

<sup>11</sup> NPRM at ¶¶ 43-44.

<sup>12</sup> *National Broadband Plan* at 129.

<sup>13</sup> *Id.*

is not unreasonable to require third-party attachers, which depend on rules such as these to deploy their network, to complete their make-ready work in 30 days. That 30-day timeline should run contemporaneously with the 45-day time period required of pole owners. If a third-party attacher is unable or unwilling to perform make-ready in the time-frame, contractors should be permitted to perform the work. A certain amount of coordination is necessary for this to work, but all parties involved cooperate and coordinate in jurisdictions, such as Connecticut, where no additional time is provided for “multiparty coordination.” The managing utility could schedule the sequence for pole occupants to increase efficiency.<sup>14</sup>

By incorporating these recommendations, a full 45 days could be removed from the process. The pole application timeline would be shortened by one-third, with no impact on safety or reliability, and minimal further demands on the pole owners to manage the licensing process.

## **V. SMALLER APPLICATIONS SHOULD HAVE SHORTER TIME FRAMES**

While the longer timeframes set forth in the NPRM, as modified above, are acceptable for larger applications, they are unworkable for smaller applications necessary for building laterals to customers near, but not on, the network backbone. While large bandwidth customers may plan long-term for broadband upgrades, smaller customers – those for whom a short network extension can be economically justified – typically are unable to wait several months for a connection. They need to replace an existing service, the contract for which is expiring in 30 to 60 days. Accordingly, where a customer is a relatively short distance from the network backbone, and where the pole attachment

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<sup>14</sup> NPRM at ¶ 73.



application is therefore limited in size, a shorter “small jobs” timeframe should be implemented.

For applications of up to 35 poles, no more than five of which require make-ready work, with no pole replacements, the initial survey, make-ready determination, and make-ready estimate should be completed in 30 days, 15 fewer than the standard application period. This period is readily achievable for such small applications. The period for make-ready performance on small jobs should be shortened to 15 days, reflecting the limited amount of make-ready work to be performed, and also reflecting that no pole replacements will be necessary.

With the increased use of boxing and extension arms,<sup>15</sup> the overall amount of make-ready work required in all applications should decrease. While such a decrease will certainly reduce the cost of constructing broadband facilities, the opportunity should be seized for reducing the time required to roll out such facilities. A shorter time frame for small jobs will certainly increase the power of broadband networks to serve customers of all types close to the network.

#### **VI. THE COMMISSION SHOULD MONITOR UTILITY COMPLIANCE WITH TIME FRAMES TO DETERMINE THE NEED FOR OTHER REMEDIES SUCH AS TEMPORARY ATTACHMENTS**

Once timeframe rules are implemented, the Commission should monitor compliance to determine if additional remedies, such as temporary attachments, may be warranted. In instances where the use of outside contractors cannot cure delays in performance, temporary attachments may allow timely service to the customer. By using extension arms on a temporary basis, necessary clearances may be achieved where make-ready work has been delayed. The attachment would be made with proper clearances

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<sup>15</sup> NPRM at ¶¶ 8-16.

and without drilling all the way through the pole so as to alter the permanent structure. Further, the temporary attachments would be installed within the communications space on the pole and not in any of the worker safety spaces. The temporary attachments would be made in a manner fully compliant with the NESC. The pole owner could agree to location and method of temporary attachment on likely “problem” poles as part of its make-ready determination. Permanent attachment should be substituted in place of the temporary attachment within 30 days after completion of necessary make-ready work. When temporary attachments are available, the pole owner and the attacher have greater flexibility in meeting deadlines and ensuring that the needs of specific customers who have contracted for telecommunications services can be fulfilled.

Temporary attachments are currently used for such purposes in New York, among other jurisdictions. The New York Public Service Commission specifically authorized the use of temporary attachments to remedy delays in the pole attachment process. The Commission’s order stated:

Temporary attachments, which are made for emergency and rebuild/upgrade processes, may also be made for the installation of facilities to compensate for delays in make-ready and other impediments to accessing poles. The methodology used for temporary attachments must be cognizant of all relevant safety requirements and equipment used must be manufactured and intended for the application. If temporary attachments are used, attachers are still required to pay for all make-ready work necessary for the permanent attachment. Make-ready work on poles with temporary attachments shall be completed within a reasonable time. When make-ready work is completed, the temporary attachment shall be replaced with standard attachments within 30 days.<sup>16</sup>

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<sup>16</sup> N.Y. PSC Order, Appx. A, at 5.

That order makes it clear that temporary attachments may be used whenever the utility is unable to meet the make-ready work timeline. Nevertheless, attachers have incentive to minimize use of temporary attachments, because their use necessitates visiting each pole twice, once to install the temporary attachments, and once to convert the temporary attachment to a permanent attachment. Accordingly, where the use of contractors would achieve timely completion of make-ready work, an attacher would likely avoid use of temporary attachments to save expense.

## **VII. CONCLUSION**

For the foregoing reasons, Fibertech respectfully urges the Commission to adopt the proposals set forth herein to minimize unnecessary delay in the deployment of competitive broadband services.

Respectfully Submitted,

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